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Attorneys for Defendant
HARLAN KELLY, JR.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

UNITED STATES OF AMERICA,

| Case No.: 3:21-CR-00402-RS

Plaintiff,

**DEFENDANT HARLAN KELLY, JR.'S
MOTION TO DENY GOVERNMENT'S
REQUEST FOR INTERPRETER**

Date: June 29, 2023
Time: 8:00 a.m.
Dept. Courtroom 3 – 17th Floor
Judge: Hon. Richard Seeborg

I. INTRODUCTION

Today, on the second day of his criminal trial, Defendant Harlan Kelly, Jr. was informed by the Government for the first time that its lead cooperating witness, Walter Wong, intends to testify against him through a Cantonese-language interpreter. Many facts make this appear to

1 defense counsel be a bad-faith request designed to interfere with Defendant's Constitutional right
 2 to cross examination, including the following:

- 3 ➤ Walter Wong has resided in the United States for nearly 50 years, and has
 4 maintained a business and personal relationship with the Defendant for two
 5 decades where they have communicated exclusively in English;
- 6 ➤ As part of the present investigation, Walter Wong met with the FBI and the
 7 United States Attorneys Office at least 18 times between February 2020 and
 8 June 2023. Reports of these meetings do not indicate that an interpreter was
 9 ever present;
- 10 ➤ Walter Wong has made numerous court appearances in his own criminal case,
 11 Case No. 3:20-cr-00257-WHO, including his change of plea hearing before
 12 Judge Orrick on July 6, 2020, and he has not previously required the services of
 13 an interpreter;
- 14 ➤ All of the interactions with Defendant and other San Francisco officials that
 15 Walter Wong is expected to testify about in this case occurred in English.

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17 II. **ARGUMENT**

18 “A defendant who communicates well in English and has no primary reliance on a
 19 foreign language is not entitled to an interpreter under the Court Interpreters Act, 28 U.S.C. §
 20 1827(d)(1).” *United States v. Catalano*, 974 F.2d 1343 (9th Cir. 1992). In that case, the Ninth
 21 Circuit held that an interpreter should not be appointed in a matter where “the court record is
 22 replete with instances where [the witness] communicated extensively and exclusively in
 23 English,” “conducted drug negotiating and trafficking in English,” where “[a] lengthy interview
 24 between Catalano and two FBI agents was conducted in English,” and where the witness
 25 participated in prior court hearings in English. The circumstances in *Catalano* are strikingly
 26 similar to the present case, where Mr. Wong is known to have conducted business and personal
 27 affairs in English, has given numerous interviews to the FBI in English, allegedly engaged in

1 criminal conduct in English, and has participated in other court hearings without requiring an
2 interpreter.

3 Procedurally, when a party objects to the appointment of an interpreter, the Court is
4 required to “conduct[] a thorough hearing with the informant outside the presence of the
5 jury[.]” *United States v. Salsedo*, 607 F.2d 318, 320 (9th Cir. 1979). In *Salsedo*, the Ninth Circuit
6 explained that appointment of an interpreter was appropriate when the court concluded after such
7 a hearing that the witness “was ‘not fluent in English.’” *Id.*

8 Pursuant to this authority, Defendant respectfully requests the Court to conduct a hearing
9 to determine whether Mr. Wong is able to understand counsel’s questions and is “capable of
10 testifying without an interpreter.” *Pietrzak v. United States*, 188 F.2d 418, 420 (5th Cir. 1951),
11 cert. denied, 342 U.S. 824. Should the Court find that Mr. Wong is capable of testifying in
12 English, Defendant requests that the Court deny his request for an interpreter.

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14 DATED: June 28, 2023

Respectfully submitted,
STEPTOE & JOHNSON LLP

16 By: /s/ Jonathan Baum
17 JONATHAN BAUM
18 BRIAN H GETZ
19 Attorneys for Defendant
20 HARLAN KELLY, JR.
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